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**Sectoral policy questions: preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin**

**Crime prevention and criminal justice**

# Prevention of corrupt practices and transfer of funds of illicit origin

## Report of the Secretary-General**

**Addendum**

*Summary*

The present addendum has been prepared by the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention, in response to General Assembly resolution 56/186 of 21 December 2001. It contains a summary of the responses received from the following countries: Bulgaria, the Czech Republic, Greece, Hungary, Jordan, Monaco, Pakistan, Sweden, Tunisia, Turkey and Ukraine.

* A/57/150.

** The delay in submitting the present addendum to the report of the Secretary-General was due to the late receipt of responses.

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# Measures adopted by countries for preventing and combating corrupt practices and transfer of funds of illicit origin

## Bulgaria

1. Efforts of Bulgaria have primarily been focused on committing the country to international legal instruments on combating corruption, such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD) and the Criminal Law and Civil Law Conventions on Corruption of the Council of Europe and to bringing national legislation into compliance with their standards.

2. Between 1997 and 2000, a series of measures were taken to strengthen the capacity of the country to counter corruption and money-laundering, including: (a) an amendment to the Penal Code (article 253), which criminalizes money-laundering; (b) the new law against money-laundering of 1998, aimed at preventing and disclosing money-laundering of legal and natural persons and establishing the Financial Intelligence Bureau; (c) a law on disclosing the assets of senior public officials (April 2000); and (d) an amendment to the Penal Code, introduced in June 2000, criminalizing the promise and offer of bribes to local and foreign public officials, as well as the demand for, and consent to receive bribes from local public officials.

3. In October 2001 Bulgaria adopted the National Strategy for Combatting Corruption. The Commission for Coordination of the Fight against Corruption was established in February 2002 to coordinate and monitor the implementation of the national strategy. In April 2002, the Government submitted, for consideration and adoption by the Parliament, a series of amendments to the Law on the Judicial Authority, aimed mainly at preventing corruption in the judicial system.

4. The Government also submitted a draft law for amendment of the Penal Code, criminalizing bribery in the private sector, trade with influence, passive bribery of foreign public officials and bribery of arbitrators, advocates and attorneys. The working group of the Ministry of Justice is developing a proposal on draft amendments to the law on administrative offences and penalties in order to introduce administrative responsibilities of legal persons for bribery, money-laundering and trade with influence committed in the interest of their senior executives.

5. Article 461 of the Penal Procedure Code provides for forfeiture and return of illicit assets as one of the actions in matters of legal assistance in criminal cases.

## Czech Republic

6. The Minister of the Interior has elaborated, in cooperation with other members of the Government, the National Programme for Combatting Corruption, which was approved in February 1999. The Ministry of the Interior has also established an Anti-Corruption Commission to monitor and identify corruption cases.

7. In connection with existing legislative measures against corruption, bribery and money-laundering, the Czech Republic indicated that sections 160 to 163 of the Criminal Code contain basic anti-corruption provisions. Active and passive corruption is criminalized in sections 160 and 161 of the Criminal Code. Trading in influence is criminalized in section 162 of the Criminal Code, as is bribery of foreign public officials. The maximum punishment for bribery offence is imprisonment for two to eight years. Money-laundering is criminalized since 1991. Modernized and strengthened provision of section 252a of the Criminal Code entered into force since 1 July 2002. The maximum punishment for a money-laundering offence is imprisonment for two to eight years.

8. The basic legal instrument against money-laundering is Law No. 61/1996, according to which banks are subject to inspections performed under the supervision of the National Bank. In addition, on the basis of this law, it is possible, upon a court decision, to access relevant data and banks are obliged to provide reports to the Financial Analytical Department of the Ministry of Finance, which deals with financial crime.

9. Under the provisions of the Criminal Code, funds of illicit origin may be frozen, seized or confiscated in the course of penal prosecution. Under certain categories of serious criminal offences, an entire property, or a portion thereof, may be forfeited (confiscated) (sect. 51-52 of the Criminal Code). In

addition, the claims of certain victims for compensation for damages caused by particular criminal offences may be preliminarily secured from the property of the accused person up to the amount of probable compensation. Only material (not moral) damage caused by a particular criminal offence is relevant in this regard.

10. International cooperation in penal matters is regulated under chapter 25 of the Criminal Procedure Code, as recently amended. These provisions shall apply unless a promulgated international treaty binding on the Czech Republic provides otherwise. Section 384 (2) stipulates that, upon request of another State, the relevant district court shall, upon motion of public prosecutor, decide on the preliminary securing (freezing) of property or a portion thereof or on its seizure under conditions set by international treaty binding on the Czech Republic. Sections 384a (1), 384d and 384f make it possible, pursuant to recognition by the Supreme Court of a decision issued by a foreign court, to execute such decision on preliminary securing (freezing) of property or on its forfeiture (confiscation) or seizure in criminal proceedings if so provided by a promulgated international treaty binding on the Czech Republic.

11. In order to ensure adequate implementation of anti-corruption programmes and legal obligations, the Czech Republic supports and actively participates in relevant monitoring activities within the framework of the Organisation for Economic Cooperation and Development and the Group of States against Corruption of the Council of Europe. The Czech Republic ratified the Council of Europe Criminal Law Convention on Corruption on 8 September 2000.

## Greece

12. The Civil Law Convention on Corruption of the Council of Europe was ratified in 2001. The draft bill on the ratification of the Criminal Law Convention on Corruption is at the final stage of elaboration.

## Hungary

13. The Criminal Code contains two acts that deal with issues of bribery and money-laundering: Act IV of 1978 on the Criminal Code Effect of Foreign Verdicts and Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law.

14. The section on prescription of punishability of Act IV of 1978 specifies what property could be confiscated and seized subject to forfeiture; while the measures against the bribery of the foreign public official are listed under the section on crimes against the purity of public life. Section 303 of the Act criminalizes money-laundering and sets out penalties for such a crime.

15. Act CIV of 2001 specifies the measures applicable to legal entities in the event of committing any wilful criminal acts as defined in Act IV of 1978, if the perpetration of such acts was aimed at or has resulted in the legal entity gaining financial advantage. The court may take measures against the legal entity, which include winding up the legal entity, limiting its activity and imposing a fine. The court may wind up the legal entity if it was established for the purpose of covering up a criminal act, or the actual activity of the legal entity serves the purpose of covering up a criminal act.

## Jordan

16. Jordan has developed the Official Conduct and Professional Ethics Guide for Customs Department Officials. The Guide contains a set of behavioural and ethical measures derived from applicable legislation and sets out what constitutes criminal offences that lead to the imposition of criminal penalties on the offender and that can cause the termination of his or her service.

## Monaco

17. Efforts of Monaco have focused on the development of national measures against money-laundering and corrupt practices as well as on committing the country to international legal instruments on combating the financing of terrorism, organized crime activities, corruption and money-laundering. In June 2001, Monaco ratified the United Nations Convention against Transnational Organized Crime and its Protocols and, in November 2001, ratified the International Convention for the Suppression of the Financing of Terrorism.

18. In view of the changes occurred at the international level after the events of 11 September 2001, and following the adoption by the Financial Action Task Force on Money Laundering of eight recommendations aiming at refusing to terrorist groups the access to international financing channels, Monaco decided to modify its law on the fight against money-laundering, with the aim of better addressing the relationship between the financing of terrorism, corruption and the transfer of funds of illicit origin.

19. In June 2002, a new law was adopted, introducing the following measures:

(a) Utilization of the definition of organized crime group as contained in article 5 of the United Nations Convention against Transnational Organized Crime;

(b) Obliging financial institutions to declare any financial operation or transfer of funds that could have a link to terrorist activities;

(c) Strengthening and improving international cooperation and information-sharing regarding the transfer of funds;

(d) Providing oversight in cases of illicit transfer of funds to financial institutions, the public mail services, insurance institutions as well as any private person undertaking financial activities on behalf of a foreign legal entity;

(e) Strengthening the "know your customer" rule;

(f) Obliging financial institutions to declare to the public authorities any transfer of funds which could derive from terrorist activities or other criminal activities such as drug trafficking or organized crime activities;

(g) Creating an institution in charge of gathering information from the financial institutions on any illicit transfer of funds.

20. In addition, according to the new law, the casinos will be obliged by law to declare any activities suspected to be linked to terrorism or to organized crime activities as well as to record the identity of clients as well as any sum of money that is over to the amount established by law.

## Pakistan

21. The Government of Pakistan has taken both legislative and administrative measures in order to prevent and combat corrupt practices and transfer of funds of illicit origin. The National Accountability Bureau Ordinance, issued by the Chief Executive of Pakistan, prevents illicit transfer of funds and makes it obligatory for banking officials to report any abnormal transaction to the authorities of the Bureau. The Bureau has been set up at the federal level with regional offices in four provinces of Pakistan. It has established courts specialized in the prosecution of white-collar crime. Prosecution has been pursued against a number of high profile politicians, holders of public offices, influential persons, senior government officers and ex-army personnel.

22. The National Accountability Bureau is currently in the process of developing a national anti-corruption strategy aimed at preventing corruption as well as at combating and monitoring corrupt practices. The strategy will also cover the administrative functioning of the different Government departments. All administrative practices that can give rise to corrupt practices are currently being reviewed in governmental and non-governmental sectors. As part of the above strategy, a national anti-corruption workshop is to be organized to make specific recommendations for changing regulatory frameworks and institution-building to combat corruption, bribery and money-laundering.

## Sweden

23. Sweden has signed and ratified several international conventions addressing corruption, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and the Convention on the protection of the European Communities' financial interests and its protocols. The signature and ratification of the above instruments led to amendments in the Swedish Penal Code regarding both active and passive corruption. Sweden has also signed both the Criminal Law and Civil Law Conventions on Corruption of the Council of Europe.

24. In addition, on 1 October 2000, new legislation on international legal assistance in criminal matters came into force, putting foreign criminal investigations on an equal footing with corresponding national cases, so that the same measures are now made available in both national and foreign investigations. Amendments were at the same time made to the Act on International Cooperation in the Enforcement of Criminal Judgments, which enables Sweden to return confiscated property or the value of such property to the requesting State.

## Tunisia

25. In 1998, Tunisia revised the penal provisions pertaining to bribery crimes. The first result of the revision was to expand the definition of "public official" to cover everyone holding public powers or running a public facility on behalf of a public service and all those working for the State or public institutions, irrespective of whether such institutions are of an administrative, commercial or industrial nature. The definition also covers those working for security bodies, the army and public enterprises and those running public or private facilities, who are currently being considered as public administrators, as well as those elected to run a public facility or judicially appointed to such a task. Under the new law, public officials who have accepted bribes and those involved in such crimes will receive fines and may be sentenced to prison terms ranging from three to six years.

26. The national strategy on how to counter crimes committed against the public administration (including bribery) is based on strengthening the administrative and judicial control structures.

27. Administrative control mechanisms include committees formed within ministries, provinces, municipalities and public enterprises; the higher committee within the prime ministry; inspection teams at ministries; the higher board for administrative and financial control, the overall control body of public enterprises; the public financial control body; and the accounting department.

28. In addition to the penal judiciary authority, the judicial control of acts of bribery is performed by the accounting department, which is an independent judicial body that supervises gains obtained by members of the Government and their wives and sons. As a part of the judicial control mechanisms, the department of financial deterrence, comprising judges from both the accounting department and the administrative court, acts as a judicial control body, examining the disposition of public funds to establish legality and imposing punitive and financial penalties for unjustifiable conduct. The administrative court plays a role in controlling the transparency of public transactions and resolves related disputes.

## Turkey

29. Turkey completed a comprehensive study, entitled "Action Plan on Enhancing Transparency and Good Governance in Turkey's Public Sector", which analysed the problem of corruption in public administration. It also evaluated the political and legal system, public administration, civil society and the private sector. In order to implement the Action Plan, a Council of Ministers decree was adopted in January 2002.

30. The Action Plan outlines measures regarding established priorities as follows:

(a) Instituting performance standards in public service delivery;

(b) Rearranging the relations between public organizations and public foundations and associations;

(c) Improving of the personnel system;

(d) Strengthening the right to information and increasing transparency in public administration;

(e) Improving the health-care system;

(f) Strengthening the inspection and audit system;

(g) Improving the judicial system;

(h) Increasing transparency and accountability in election campaign financing;

(i) Strengthening local administrations;

(j) Adopting effective measures against money-laundering.

31. A Ministerial Commission will be established to ensure effectiveness and coordination in pursuing the above-mentioned priority targets. In addition, the Ministry of Finance and related institutions will submit

to the Parliament a draft law to enhance effectiveness in fighting money-laundering, seizing revenues gained through money-laundering and expanding the definition of predicate crimes to include corruption activities in line with international agreements. The establishment of a central financial intelligence database is also under way.

## Ukraine

32. The national strategy for combating crime and corruption, based on a series of instruments developed by relevant government authorities, includes the Comprehensive Crime Prevention Programme 2001-2005, the National Anti-Corruption Programme and the Approach to Combating Corruption for 1998-2005, as well as the decisions of the Coordinating Committee to Combat Corruption and Organized Crime of the Office of the President.

33. Ukraine has acceded to a series of specific international agreements, including the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990; the Council of Europe Criminal Law and Civil Law Conventions on Corruption of 1999 and the United Nations Convention against Transnational Organized Crime of 2000. On 23 November 2001, Ukraine became the forty-third State to sign the Council of Europe Convention on Cybercrime. In addition, Ukraine is party to a series of bilateral international agreements governing various issues of legal aid in criminal matters.

34. In view of the fact that the biggest problem in recovering funds acquired illegally and transferred abroad, as well as in dealing with bribery in international transactions, is that the criminals are able to use offshore zones and online bank accounts to conduct various kinds of financial transactions, Ukraine has initiated agreements on mutual legal aid with, inter alia, Antigua and Barbuda and Hong Kong.

35. In order to prevent that huge bribes paid to public officials are transferred directly to their accounts on foreign banks, Ukraine has adopted a series of legislative measures, among which the revision of the Criminal Code and the adoption of a Presidential decree on measures to prevent the legalization (laundering) of money received as the proceeds of crime. Article 209 of the revised Criminal Code makes the legalization (laundering) of money received as the proceeds of crime a criminal offence. It is also a criminal offence to establish organized groups in Ukraine or abroad for the purpose of legalization (laundering) of money received as the proceeds of crime a criminal offence.

36. Relevant government agencies have also developed a series of regulatory texts laying down rules for the implementation of measures to prevent the laundering of money which is the proceeds of crime. In particular, the Supreme Council has approved a series of bills, among them "Repression and prevention of the legalization (laundering) of money which is the proceeds of crime", "Amendments to various legislation of Ukraine" ("Repression and prevention of the legalization (laundering) of money which is the proceeds of crime"), "Repression and prevention of the legalization (laundering) of assets (money and property) which is the proceeds of crime" and the new text of the Ukraine Banks and Banking Act. A new bill to combat the laundering of money received as the proceeds of crime has also been submitted to the Ukraine Supreme Council.

37. The Coordinating Committee on Combating Corruption and Organized Crime, a special State agency, within the Office of the President has been established to combat corruption and organized crime. The Committee's main task is to coordinate the activities of all State agencies involved in combating organized crime and corruption. In December 2001, the Committee mandated the National Bank, the State Tax Authorities, the Ministry of Internal Affairs, the Ministry of Justice and other departments to prepare and submit to the Council of Ministers a bill to amend the national legislation in order to align it with the 40 recommendations of the Financial Action Task Force on Money Laundering.

38. In addition, the Financial Monitoring Department has been set up within the Ministry of Finance to collect and analyse information on significant and suspicious financial transactions, and to pass this information on to the law enforcement agencies. In 2001, an act amending various laws of Ukraine was passed in connection with the adoption of the Banks and Banking Act.

39. With a view to filling the existing gaps in the national legislation to counter corruption, particularly in the economic, financial and banking systems, a new

draft of the Prevention of Corruption Act is now being examined by the Supreme Council of Ukraine. In addition, a report is being prepared on Ukraine's current legislation to identify laws that hinder the prevention of corruption and organized crime. Also, economic and legal mechanisms are being introduced as a legal response to breaches of market relationships (unfair competition).

40. Ukraine indicated that, overall, anti-corruption activities by State agencies are now improving. The effectiveness of the process has resulted in better social and legal control and accountability of State services, transparency in decision-making as well as the establishment of a truly independent and effective law enforcement system. In connection with the fight against terrorism, there is also a bill before the Supreme Council concerning the financing of terrorist groups.

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**Crime prevention and criminal justice**

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## Report of the Secretary-General*

**Addendum**

*Summary*

The present addendum has been prepared by the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention, in response to General Assembly resolution 56/186 of 21 December 2001. It contains a summary of the response received from Slovenia.

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# Measures adopted by countries for preventing and combating corrupt practices and transfer of funds of illicit origin

## Slovenia

1. Slovenia has signed and ratified the Criminal Law Convention on Corruption of the Council of Europe (Official Gazette RS, No. 26/00-MP No. 7) together with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD) (Official Gazette RS, No. 01/01-MP No. 1). It has also signed the Civil Law Convention on Corruption of the Council of Europe.

2. Efforts have been also focused on committing the country to international legal standards on combating money-laundering. The ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of the Council of Europe (Official Gazette RS, MP Nos. 11/97 and 8/98, hereinafter "the Convention SE No. 141") brought to a change in the relevant national legislation. The definition of the criminal offence of money-laundering contained in article 252 of the Penal Code (Official Gazette RS, Nos. 63/94 and 23/99) was extended. Likewise, the measure of the deprivation of pecuniary advantage was also extended to include the deprivation of legal property of the offender and of related legal entities or individuals, in the counter value of the obtained pecuniary advantage. Changes in the Criminal Procedure Act were also undertaken.

3. In addressing the issue of the predicate offences of money-laundering, Slovenia opted for the so-called "all crime model", which expands the scope of the predicate offences of money-laundering so as to include all criminal offences, irrespective of their importance and the weight of their consequences. The selection of this model proved to be of particular importance in view of Slovenia's accession to the Criminal Law Convention on Corruption of the Council of Europe. According to article 13 of the Convention, in fact, States Parties are required to criminalize money-laundering originating from any criminal offences of corruption enumerated in the Convention.

4. On the basis of article 13 of the Prevention of Money Laundering Act (Official Gazette RS, No. 79/01), the Office for the Prevention of Money Laundering carries out the tasks related to the prevention and detection of money-laundering as well as other tasks such as receiving, collecting, analysing and transferring relevant data and information.

5. Regarding the seizure or confiscation of pecuniary advantage that originates from criminal offences of corruption, the offender shall be deprived of such unlawful pecuniary advantage, on the basis of a court decision that establishes the criminal offence, first by seizing the money, valuables and any other pecuniary advantage obtained by the offender or by any other recipient on the basis of a criminal offence or because of a criminal offence. Shall this not be possible for objective reasons, the court shall seize the legal property of the offender in an amount corresponding to the unlawful pecuniary advantage. In case the offender cannot be deprived of the unlawfully acquired pecuniary advantage in this way, article 96, paragraph 3, of the Penal Code authorizes the court to oblige the offender, or any person who received a pecuniary advantage, to pay a sum corresponding to

the value of the unlawfully obtained pecuniary advantage. In this context, reference should also be made to three institutes foreseen by the criminal law, which are directly related to the deprivation of unlawfully obtained pecuniary advantage: (a) the pecuniary claim of the victim or the provisional security of the claim; (b) the provisional security of the deprivation of pecuniary advantage; and (c) the seizure of objects that came into being on the basis of the criminal offence or by the criminal offence.

6. Slovenia has also indicated that, at the moment, there is no legal provision in the country that would enable a possible foreign victim (either an individual or legal entity) to repatriate funds or assets transferred by an offender from a foreign country to Slovenia as an unlawful pecuniary advantage, irrespective of the fact that the foreign country issued a request to seize the objects or the pecuniary advantage located on the territory of Slovenia. This is due to the fact that the provision of article 15 of the Convention SE No. 141, which establishes that the property seized by the requested signatory State, in accordance with its internal legislation, shall be at the disposal of the requested signatory State itself, unless otherwise agreed by the Parties concerned, is still in force. An exception to this provision is possible if the foreign victim individually enforces the above pecuniary claim before a Slovene court to be compensated for the damage that occurred to him/her due to the criminal offence, on condition that a criminal proceeding against the offender has been instituted before court in Slovenia. Thus, the possibility of repatriation of funds or assets could only be enforced within the framework of bilateral or multilateral agreements upon the adoption of appropriate international legal documents.